

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	2:05-CV-1178-WKW-DRB
)	
HORACE MILTON BLACK)	

ORDER

After due consideration of the Federal Defender's *Report to the Court and Response to Order*, filed June 8, 2006 (Doc. 19), it is, for good cause, **ORDERED** as follows:

1. The March 17, 2006, Order of appointment for the Federal Defender (Doc. 16) is hereby rescinded, and the Order is otherwise vacated.
2. **CJA Panel Attorney Pate DeBardelaben is hereby appointed** to represent the Petitioner, Horace Milton Black, who is eligible for the appointment of counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. Appointed counsel shall file by June 19, 2006, a notice of appearance pursuant to this limited-purpose appointment.

This appointment is limited to representation on an evidentiary hearing on a single claim asserted in Petitioner's 28 U.S.C. § 2255 motion filed on December 1, 2005 (Doc. # 1): ineffectiveness of trial counsel for failing to file an appeal on his behalf.¹ After considering the submissions pertinent to this issue, the Magistrate Judge determines, pursuant to *Rule 8, Rules Governing Section 2255 Proceedings for the United States District Court*, that an evidentiary hearing is

¹Black contends that he requested his attorney, Terry R. Smyly, to file a direct appeal on his behalf, but that Smyly failed to do so. *See § 2255 Mot.* (Doc. #1) at 5; *Affidavit of Black* (Doc. # 12) at 1-2. Smyly responds, in part, that Black "specifically advised [him] that he did not want to appeal." *See Affidavit of Smyly* (Doc. # 3).

required for resolution of this issue.

3. Counsel shall confer expeditiously with Black regarding (a) the issue specified for an evidentiary hearing, and (b) additional claims asserted in his amended pleadings (Docs. # 7 & # 15).
4. **On or before July 24, 2006**, counsel shall file a final statement of the claims which will be pursued in this § 2255 motion, and counsel shall identify clearly any additional claims requiring an evidentiary hearing. **Counsel is instructed to serve the statement on the United States Attorney and on trial counsel, Terry R. Smyly.**

Atty. Smyly shall file not later than August 15, 2006, an affidavit which addresses any claims of ineffective assistance of counsel presented against him in Black's final statement of § 2255 claims, and he shall also furnish the United States Attorney and counsel for Black with copies of his affidavit.

The United States Attorney is instructed to file a response to Black's final statement of § 2255 claims not later than August 31, 2006.

5. This case is set for a **pre-hearing conference with counsel at 11:00 a.m. on September 7, 2006**, to narrow the issues and discuss procedural matters related to the evidentiary hearing.

6. The **evidentiary hearing shall commence at 10:00 a.m. on October 11, 2006**, in District Courtroom 4A.

7. The Clerk is DIRECTED to serve this Order promptly upon the CJA Panel Attorney, the United States Attorney, Atty. Terry Smyly, and the Petitioner, and the Clerk shall also make available to appointed counsel the case file as reasonably requested.

Done this 9th day of June, 2006.

/s/ Delores R. Boyd

DELORES R. BOYD

UNITED STATES MAGISTRATE JUDGE